

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Re:)	
)	Case No. 11-52963-659
MATTHEW AND REBECCA BROWN,)	
)	Chapter 7
Debtors.)	
)	
CHARLES W. RISKE, TRUSTEE,)	
)	
Movant,)	
)	
vs.)	
)	Response Due: 2/3/14
MATTHEW AND REBECCA BROWN,)	Hearing Date: 2/10/14
)	Hearing Time: 10:00 a.m.
Respondents.)	Location: St. Louis, Courtroom 7 North

MOTION OF TRUSTEE FOR ORDER
COMPELLING TURNOVER OF PROPERTY
AND NOTICE OF HEARING

TAKE NOTICE that the aforementioned Motion of Trustee for Order Compelling Turnover of Property will be heard before the Honorable Kathy A. Surratt-States in Bankruptcy Courtroom 7 North, Thomas F. Eagleton U.S. Courthouse, 111 South 10th Street, St. Louis, Missouri 63102, on the 10th day of February, 2014 at 10:00 a.m. **WARNING: A written response must be filed with the Clerk, U.S. Bankruptcy Court, 111 South 10th Street, 4th Floor, St. Louis, Missouri 63102, and a copy served upon the undersigned by February 3, 2014. Failure to file a timely response may result in the Court granting the relief requested prior to the hearing date. You should read this paper carefully and discuss it with your attorney, if you have one.**

COMES NOW Charles W. Riske, duly appointed and qualified Trustee in bankruptcy herein and for his Motion states as follows:

1. The Debtors filed their voluntary Chapter 7 petition in bankruptcy on December 15, 2011 on which date an order of relief was duly entered.
2. Charles W. Riske is the duly appointed, qualified and acting Trustee in bankruptcy herein.
3. Trustee brings this motion in accordance with the provisions of 11 U.S.C. § 541 and Bankruptcy Rule 7001. The within motion is a proceeding to compel the Debtors to deliver property to the Trustee and accordingly, may be prosecuted by motion as opposed to adversary proceeding

pursuant to Bankruptcy Rule 7001.

4. Debtors were entitled to receive \$10,580.00 Federal and \$546.00 State income tax refunds for the tax year 2012. Due to the timing of the filing of the bankruptcy, 95.62% of the refunds or \$10,638.20 is property of the bankruptcy estate, along with bank deposits in the amount of \$206.72 for a total of \$10,845.00.

5. Debtors have claimed exemptions against the income tax refunds and bank deposits in the amount of \$3,000.00, leaving \$7,845.00 of non-exempt property.

6. Debtors have been advised, through counsel, that these monies are property of the bankruptcy estate.

7. Trustee has made repeated demand upon the Debtors, through counsel, for turnover of these funds.

8. The Debtors have failed to comply with the Trustee's reasonable requests for the surrender of property of this bankruptcy estate. Accordingly, this Court should enter its order to compel the Debtors to surrender the proceeds of the income tax refunds to the Trustee for the benefit of the bankruptcy estate.

9. Pursuant to Section 105 of the Bankruptcy Code and the equitable powers of this Court, the Court should order the Debtors to pay \$600.00 in attorney's fees for the costs of filing and prosecuting this motion. The Debtors have a duty under the Bankruptcy Code to cooperate with the Trustee and surrender property of the estate and the Debtors have breached their duty to do so by failing to voluntarily surrender the non-exempt property. Accordingly, attorney's fees should be assessed against the Debtors.

WHEREFORE, Trustee prays that the Court enter its order, ordering the Debtors to surrender their non-exempt property in the sum of \$7,845.00, plus \$600.00 for attorney's fees, costs

of filing and prosecuting of this motion; and for such other and further relief as the Court deems just.

/S/ CHARLES W. RISKE
CHARLES W. RISKE, #30698MO
Trustee in Bankruptcy
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CERTIFICATE OF SERVICE

A copy of the foregoing was mailed, postage prepaid, this 10th day of January, 2014 to: Matthew and Rebecca Brown, 677 Foristell Road, Wentzville, MO 63385; Kristen R. Wood, Attorney for Debtors, 1861 Sherman Drive, St. Charles, MO 63303; and via ECF to the Office of the United States Trustee, 111 S. 10th St., Ste. 6353, St. Louis, MO 63102.

/S/ CHARLES W. RISKE